

**ASSEMBLY BILL**

**No. 1151**

**Introduced by Assembly Member Dymally**

February 21, 2003

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An act to amend Sections 820.21 and 911.4 of the Government Code, to amend Section 1527.6 of the Health and Safety Code, and to amend Sections 311, 317, 361.3, 16001.9, 16500, 16501.1, and 16507.5 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1151, as introduced, Dymally. Foster care.

Existing law provides generally that a public employee is not liable for an injury resulting from his or her act or omission where it was the result of the exercise of his or her discretion, whether or not that discretion was abused, but that he or she is liable for injury caused by his or her actual fraud, corruption, or actual malice. Existing law provides that the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to juvenile court law shall not extend to specified acts if any of those acts are committed with malice, as defined.

This bill would revise those acts and would add to those acts the failure to disclose to the court competent evidence of molestation or serious physical endangerment.

Existing law requires a claim for personal injury against a public entity, which includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, or against an employee of a public entity, to be presented not later than 6

months after accrual of the cause of action. Existing law provides that when a claim is not filed within the 6-month period, an application for leave to present the claim within a reasonable time not to exceed one year after the accrual of the cause of action may be filed in accordance with specified provisions. Existing law provides that the time during which a person is detained or adjudged a dependent child of the juvenile court pursuant to certain provisions of law shall, under certain circumstances, not be counted in that one-year period.

This bill would provide that the time during which a minor is adjudged to be a dependent child of the juvenile court, pursuant to certain provisions of law, shall not be counted in that one-year period if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.

Existing law establishes the Foster Family Home and Small Family Home Insurance Fund within the State Department of Social Services to pay on behalf of foster family homes and small family homes, claims of foster children, their parents, guardians, and guardians ad litem resulting from occurrences peculiar to the foster-care relationship and the provision of foster-care services. Existing law requires that any claim against the fund filed by a foster parent or a 3rd party be submitted to the fund within the applicable period of limitation for the appropriate civil action underlying the claim. Existing law provides that if a person entitled to bring an action under specified laws is, at the time the cause of action accrued, either a minor or insane, the time of this disability is not part of the time limited for the commencement of the action.

This bill would provide that a claim against the fund filed by a foster parent or 3rd party is subject to the latter provision described above that extends the limitation of time for the commencement of an action for a minor.

Under existing law, when a minor who has been taken into custody is delivered to a probation officer, the officer is required to conduct a specified investigation and release the minor to the custody of the minor's parent, guardian, or responsible relative unless certain circumstances exist. If the probation officer determines that a minor shall be retained in custody, existing law requires the officer to immediately file a petition to commence proceedings to declare the minor a ward or a dependent child of the court with the clerk of the juvenile court.



This bill would, instead, require the prosecutor or county counsel to file the petition when the probation officer determines that the minor shall be retained in custody.

Existing law requires, in any case in which a child is not represented by counsel and the child would benefit from the appointment of counsel, the court to appoint counsel for the minor to primarily be an advocate for the protection, safety, and physical and emotional well-being of the minor. Under existing law, counsel appointed pursuant to this provision is not expected to provide nonlegal services to the child. Existing law requires the court to take whatever appropriate action is necessary to fully protect the interests of the child.

This bill would include within the acts the court is required to take pursuant to this latter provision, the appointment of counsel and social workers to represent and service the child in nondependency proceedings, including with respect to health, safety, special needs, nutrition, and educational needs. By imposing new duties on counties with respect to child welfare services, this bill would impose a state-mandated local program.

Existing law requires that if a child is removed from the physical custody of his or her parents, preferential consideration be given to a request by a relative of the child for placement of the child with the relative.

This bill would provide that the first, paramount, and superseding mandatory duty of the county social worker and the court shall be to safeguard the child from further abuse and neglect while in foster care placement, and within compliance with that requirement preferential consideration shall be given to a relative under this provision.

Existing law sets forth the policy of the state that all children placed in foster care have certain rights, and requires social workers and facilities providing social services to children in foster care to provide those children with information regarding those rights.

This bill would create a cause of action for equitable relief to enforce those rights for the guardian ad litem or attorney of a child whose rights have been violated. The bill would authorize the court, on its own motion, to issue an order of compliance upon any person abridging or threatening those rights.

Existing law requires the state, through the department and county welfare departments, to establish and support a public system of statewide child welfare services, and declares the intent of the



Legislature that all children are entitled to be safe and free from abuse and neglect.

This bill would declare legislative intent that, in providing this child welfare services system, the state owes a mandatory duty of the highest order to protect and care for abused and neglected children over whom the state has taken jurisdiction through juvenile dependency court orders.

Existing law provides that when out-of-home placement is used, the decision regarding the choice of placement shall be based upon the selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest. Existing law specifies various placement options in order of the priority in which they are to be considered.

This bill would provide that the decision regarding a choice of placement shall first ensure the safety and protection of the child from abuse and thereafter be based upon the above criteria and considerations.

Existing law provides that when a child is separated or is in the process of being separated from the minor's family under the provisions of a voluntary placement agreement, the county welfare department or a licensed private or public adoption agency social worker shall make any reasonable and necessary provisions for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment.

This bill would additionally require the county welfare department or the social worker to ensure as a foremost mandatory duty that the child is protected from further abuse and neglect while under the jurisdiction of the court and the regulatory jurisdiction of the foster care system.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,



reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known and may be cited as the  
2 Duty to Foster Children Reaffirmation Act.

3 SEC. 2. (a) The Legislature finds and declares that this act is  
4 intended to clarify the law following the decision in County of Los  
5 Angeles v. Superior Court of Los Angeles; Real Party in Interest  
6 Terrell R. (2002) 102 Cal.App.4th 627.

7 (b) The Legislature finds and declares all of the following:

8 (1) The state has a special duty to care for and protect the  
9 children the state places into foster care.

10 (2) The judicial order taking jurisdiction over children placed  
11 into foster care supplants or limits parental or previous adult  
12 authority.

13 (3) Accordingly, the state assumes an obligation of the highest  
14 order to ensure the safety of children in foster care.

15 (c) It is the intent of the Legislature to enact legislation to  
16 provide that certain standards and requirements specified in statute  
17 that address the care and safety of foster children, and the rules and  
18 manuals adopted to implement those statutes, each constitute  
19 mandatory and enforceable duties.

20 SEC. 3. Section 820.21 of the Government Code is amended  
21 to read:

22 820.21. (a) Notwithstanding any other ~~provision of the law,~~  
23 the civil immunity of juvenile court social workers, child  
24 protection workers, and other public employees authorized to  
25 initiate or conduct investigations or proceedings pursuant to  
26 Chapter 2 (commencing with Section 200) of Part 1 of Division 2  
27 of the Welfare and Institutions Code shall not extend to any of the  
28 following, if committed with malice:

29 (1) Perjury.

30 (2) Fabrication of evidence.

31 (3) Failure to disclose *to the court competent* known  
32 exculpatory evidence.



1 (4) *Failure to disclose to the court competent evidence of*  
2 *molestation or serious physical endangerment.*

3 (5) Obtaining testimony by duress, as defined in Section 1569  
4 of the Civil Code, fraud, as defined in either Section 1572 or  
5 Section 1573 of the Civil Code, or undue influence, as defined in  
6 Section 1575 of the Civil Code.

7 (b) As used in this section, “malice” means conduct that is  
8 intended by the person described in subdivision (a) to cause injury  
9 to the plaintiff or despicable conduct that is carried on by the  
10 person described in subdivision (a) with a willful and conscious  
11 disregard of the rights or safety of others.

12 SEC. 4. Section 911.4 of the Government Code is amended to  
13 read:

14 911.4. (a) When a claim that is required by Section 911.2 to  
15 be presented not later than six months after the accrual of the cause  
16 of action is not presented within that time, a written application  
17 may be made to the public entity for leave to present that claim.

18 (b) The application shall be presented to the public entity as  
19 provided in Article 2 (commencing with Section 915) within a  
20 reasonable time not to exceed one year after the accrual of the  
21 cause of action and shall state the reason for the delay in presenting  
22 the claim. The proposed claim shall be attached to the application.

23 (c) In computing the one-year period under subdivision (b),  
24 ~~time the following shall apply:~~

25 (1) *The time* during which the person who sustained the alleged  
26 injury, damage, or loss as a minor shall be counted, but the time  
27 during which he or she is mentally incapacitated and does not have  
28 a guardian or conservator of his or her person shall not be counted.

29 ~~(d) In addition, the~~

30 (2) *The time* shall not be counted during which the person is  
31 detained or adjudged to be a dependent child of the juvenile court  
32 under the Arnold-Kennick Juvenile Court Law (Chapter 2  
33 (commencing with Section 200) of Part 1 of Division 2 of the  
34 Welfare and Institutions Code), if both of the following conditions  
35 exist:

36 ~~(1)–~~

37 (A) The person is in the custody and control of an agency of the  
38 public entity to which a claim is to be presented.

39 ~~(2)–~~

(B) The public entity or its agency having custody and control of the minor is required by statute or other law to make a report of injury, abuse, or neglect to either the juvenile court or the minor's attorney, and that entity or its agency fails to make this report within the time required by the statute or other enactment, with this time period to commence on the date on which the public entity or its agency becomes aware of the injury, neglect, or abuse. In circumstances where the public entity or its agency makes a late report, the claim period shall be tolled for the period of the delay caused by the failure to make a timely report.

*(3) The time shall not be counted during which a minor is adjudged to be a dependent child of the juvenile court under the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code), if the minor is without a guardian ad litem or conservator for purposes of filing civil actions.*

SEC. 5. Section 1527.6 of the Health and Safety Code is amended to read:

1527.6. (a) Any claim against the fund shall be filed with the fund in accordance with claims procedures and on forms prescribed by the State Department of Social Services or its designated contract agency.

(b) Any claim against the fund filed by a foster parent or a third party shall be submitted to the fund within the applicable period of limitations for the appropriate civil action underlying the claim, *subject to Section 352 of the Code of Civil Procedure as that section applies to a minor.* If a claim is not submitted to the fund within the applicable time, there shall be no recourse against the fund.

(c) The department shall approve or reject a claim within 180 days after it is presented.

(d) No person may bring a civil action against a foster parent for which the fund is liable unless that person has first filed a claim against the fund and the claim has been rejected, or the claim has been filed, approved, and paid, and damages in excess of the payment are claimed.

SEC. 6. Section 311 of the Welfare and Institutions Code is amended to read:

311. (a) If the probation officer determines that the minor shall be retained in custody, ~~he or she~~ *the prosecutor or county*

1 *counsel* shall immediately file a petition pursuant to Section 332  
2 with the clerk of the juvenile court who shall set the matter for  
3 hearing on the detention hearing calendar.

4 (b) In the hearing, the child, parents, or guardians have a  
5 privilege against self-incrimination and have a right to  
6 confrontation by, and cross-examination of, any person examined  
7 by the court as provided in Section 319.

8 SEC. 7. Section 317 of the Welfare and Institutions Code is  
9 amended to read:

10 317. (a) When it appears to the court that a parent or guardian  
11 of the child desires counsel but is presently financially unable to  
12 afford and cannot for that reason employ counsel, the court may  
13 appoint counsel as provided in this section.

14 (b) When it appears to the court that a parent or guardian of the  
15 child is presently financially unable to afford and cannot for that  
16 reason employ counsel, and the child has been placed in  
17 out-of-home care, or the petitioning agency is recommending that  
18 the child be placed in out-of-home care, the court shall appoint  
19 counsel, unless the court finds that the parent or guardian has made  
20 a knowing and intelligent waiver of counsel as provided in this  
21 section.

22 (c) Where a child is not represented by counsel, the court shall  
23 appoint counsel for the child unless the court finds that the child  
24 would not benefit from the appointment of counsel. The court shall  
25 state on the record its reasons for that finding. A primary  
26 responsibility of any counsel appointed to represent a child  
27 pursuant to this section shall be to advocate for the protection,  
28 safety, and physical and emotional well-being of the child.  
29 Counsel for the child may be a district attorney, public defender,  
30 or other member of the bar, provided that the counsel does not  
31 represent another party or county agency whose interests conflict  
32 with the child's. The fact that the district attorney represents the  
33 child in a proceeding pursuant to Section 300 as well as conducts  
34 a criminal investigation or files a criminal complaint or  
35 information arising from the same or reasonably related set of facts  
36 as the proceeding pursuant to Section 300 is not in and of itself a  
37 conflict of interest. The court may fix the compensation for the  
38 services of appointed counsel. The appointed counsel shall have  
39 a caseload and training that assures adequate representation of the  
40 child. The Judicial Council shall promulgate rules of court that

1 establish caseload standards, training requirements, and  
2 guidelines for appointed counsel for children and shall adopt rules  
3 as required by Section 326.5 no later than July 1, 2001.

4 (d) The counsel appointed by the court shall represent the  
5 parent, guardian, or child at the detention hearing and at all  
6 subsequent proceedings before the juvenile court. Counsel shall  
7 continue to represent the parent or child unless relieved by the  
8 court upon the substitution of other counsel or for cause. The  
9 representation shall include representing the parent or the child in  
10 termination proceedings and in those proceedings relating to the  
11 institution or setting aside of a legal guardianship.

12 (e) The counsel for the child shall be charged in general with  
13 the representation of the child's interests. To that end, the counsel  
14 shall make or cause to have made any further investigations that  
15 he or she deems in good faith to be reasonably necessary to  
16 ascertain the facts, including the interviewing of witnesses, and he  
17 or she shall examine and cross-examine witnesses in both the  
18 adjudicatory and dispositional hearings. He or she may also  
19 introduce and examine his or her own witnesses, make  
20 recommendations to the court concerning the child's welfare, and  
21 participate further in the proceedings to the degree necessary to  
22 adequately represent the child. In any case in which the child is  
23 four years of age or older, counsel shall interview the child to  
24 determine the child's wishes and to assess the child's well-being,  
25 and shall advise the court of the child's wishes. Counsel for the  
26 child shall not advocate for the return of the child if, to the best of  
27 his or her knowledge, that return conflicts with the protection and  
28 safety of the child. In addition counsel shall investigate the  
29 interests of the child beyond the scope of the juvenile proceeding  
30 and report to the court other interests of the child that may need to  
31 be protected by the institution of other administrative or judicial  
32 proceedings. The attorney representing a child in a dependency  
33 proceeding is not required to assume the responsibilities of a social  
34 worker and is not expected to provide nonlegal services to the  
35 child. ~~The~~

36 (f) *In addition to counsel appointed by the court as specified in*  
37 *subdivisions (c), (d), and (e), the court shall take whatever*  
38 *additional appropriate action is necessary to fully protect the*  
39 *interests of the child, including the appointment of qualified*  
40 *counsel and social workers to represent and service the child in*



1 *nondependency proceedings, including proceedings pertaining to*  
2 *health, safety, special needs, nutrition, and educational needs.*  
3 *These nondependency proceedings shall be governed by Chapter*  
4 *3 (commencing with Section 372) of Title 3 of Part 2 of the Code*  
5 *of Civil Procedure.*

6 ~~(f)~~

7 (g) Either the child or the counsel for the child, with the  
8 informed consent of the child if the child is found by the court to  
9 be of sufficient age and maturity to so consent, may invoke the  
10 psychotherapist-client privilege, physician-patient privilege, and  
11 clergyman-penitent privilege, ~~and if privilege.~~ If the child invokes  
12 the privilege, counsel may not waive it, but if counsel invokes the  
13 privilege, the child may waive it. Counsel shall be holder of these  
14 privileges if the child is found by the court not to be of sufficient  
15 age and maturity to so consent. For the sole purpose of fulfilling  
16 his or her obligation to provide legal representation of the child,  
17 counsel for a child shall have access to all records with regard to  
18 the child maintained by a health care facility, as defined in Section  
19 1545 of the Penal Code, ~~a health care providers~~ *provider*, as  
20 defined in *paragraph (2) of subdivision (c) of* Section 6146 of the  
21 Business and Professions Code, a physician and surgeon or other  
22 health practitioner as ~~defined described in paragraphs (21) to~~  
23 ~~(28), inclusive, of subdivision (a) of~~ Section 11165.8 *11165.7* of  
24 the Penal Code, or a child care custodian, as ~~defined described in~~  
25 ~~paragraphs (1) to (18), inclusive, of subdivision (a) of~~ Section  
26 11165.7 of the Penal Code. Notwithstanding any other law,  
27 counsel shall be given access to all records relevant to the case  
28 which are maintained by state or local public agencies. All  
29 information requested from a child protective agency regarding a  
30 child who is in protective custody, or from a child's guardian ad  
31 litem, shall be provided to the child's counsel within 30 days of the  
32 request.

33 ~~(g)~~

34 (h) In a county of the third class, if counsel is to be provided to  
35 a child at county expense other than by counsel for the agency, the  
36 court shall first utilize the services of the public defender prior to  
37 appointing private counsel, to provide legal counsel. Nothing in  
38 this subdivision shall be construed to require the appointment of  
39 the public defender in any case in which the public defender has  
40 a conflict of interest. In the interest of justice, a court may depart

1 from that portion of the procedure requiring appointment of the  
2 public defender after making a finding of good cause and stating  
3 the reasons therefor on the record.

4 ~~(h)~~—

5 (i) In a county of the third class, if counsel is to be appointed  
6 for a parent or guardian at county expense, the court shall first  
7 utilize the services of the alternate public defender, prior to  
8 appointing private counsel, to provide legal counsel. Nothing in  
9 this subdivision shall be construed to require the appointment of  
10 the alternate public defender in any case in which the public  
11 defender has a conflict of interest. In the interest of justice, a court  
12 may depart from that portion of the procedure requiring  
13 appointment of the alternate public defender after making a  
14 finding of good cause and stating the reasons therefor on the  
15 record.

16 SEC. 8. Section 361.3 of the Welfare and Institutions Code is  
17 amended to read:

18 361.3. (a) In any case in which a child is removed from the  
19 physical custody of his or her parents pursuant to Section 361, *the*  
20 *first, paramount, and superseding mandatory duty of the county*  
21 *social worker and the court shall be to safeguard the child from*  
22 *further abuse and neglect while in foster care placement. Within*  
23 *compliance with that primary duty*, preferential consideration  
24 shall be given to a request by a relative of the child for placement  
25 of the child with the relative. In determining whether placement  
26 with a relative is appropriate, the county social worker and court  
27 shall consider, but shall not be limited to, consideration of all the  
28 following factors:

29 (1) The best interest of the child, including special physical,  
30 psychological, educational, medical, or emotional needs.

31 (2) The wishes of the parent, the relative, and child, if  
32 appropriate.

33 (3) The provisions of Part 6 (commencing with Section 7950)  
34 of Division 12 of the Family Code regarding relative placement.

35 (4) Placement of siblings and half-siblings in the same home,  
36 if that placement is found to be in the best interest of each of the  
37 children as provided in Section 16002.

38 (5) The good moral character of the relative and any other adult  
39 living in the home, including whether any individual residing in

1 the home has a prior history of violent criminal acts or has been  
2 responsible for acts of child abuse or neglect.

3 (6) The nature and duration of the relationship between the  
4 child and the relative, and the relative's desire to care for the child.

5 (7) The ability of the relative to do the following:

6 (A) Provide a safe, secure, and stable environment for the  
7 child.

8 (B) Exercise proper and effective care and control of the child.

9 (C) Provide a home and the necessities of life for the child.

10 (D) Protect the child from his or her parents.

11 (E) Facilitate court-ordered reunification efforts with the  
12 parents.

13 (F) Facilitate visitation with the child's other relatives.

14 (G) Facilitate implementation of all elements of the case plan.

15 (H) Provide legal permanence for the child if reunification  
16 fails.

17 However, any finding made with respect to the factor  
18 considered pursuant to this subparagraph and pursuant to  
19 subparagraph (G) shall not be the sole basis for precluding  
20 preferential placement with a relative.

21 (I) Arrange for appropriate and safe child care, as necessary.

22 (8) The safety of the relative's home. For a relative to be  
23 considered appropriate to receive placement of a child under this  
24 section, the relative's home shall first be approved pursuant to the  
25 process and standards described in subdivision (d) of Section 309.

26 In this regard, the Legislature declares that a physical disability,  
27 such as blindness or deafness, is no bar to the raising of children,  
28 and a county social worker's determination as to the ability of a  
29 disabled relative to exercise care and control should center upon  
30 whether the relative's disability prevents him or her from  
31 exercising care and control. The court shall order the parent to  
32 disclose to the county social worker the names, residences, and any  
33 other known identifying information of any maternal or paternal  
34 relatives of the child. This inquiry shall not be construed, however,  
35 to guarantee that the child will be placed with any person so  
36 identified. The county social worker shall initially contact the  
37 relatives given preferential consideration for placement to  
38 determine if they desire the child to be placed with them. Those  
39 desiring placement shall be assessed according to the factors  
40 enumerated in this subdivision. The county social worker shall

1 document these efforts in the social study prepared pursuant to  
2 Section 358.1. The court shall authorize the county social worker,  
3 while assessing these relatives for the possibility of placement, to  
4 disclose to the relative, as appropriate, the fact that the child is in  
5 custody, the alleged reasons for the custody, and the projected  
6 likely date for the child's return home or placement for adoption  
7 or legal guardianship. However, this investigation shall not be  
8 construed as good cause for continuance of the dispositional  
9 hearing conducted pursuant to Section 358.

10 (b) In any case in which more than one appropriate relative  
11 requests preferential consideration pursuant to this section, each  
12 relative shall be considered under the factors enumerated in  
13 subdivision (a).

14 (c) For purposes of this section, *the following definitions*  
15 *apply*:

16 (1) "Preferential consideration" means that the relative  
17 seeking placement shall be the first placement to be considered and  
18 investigated.

19 (2) "Relative" means an adult who is related to the child by  
20 blood, adoption, or affinity within the fifth degree of kinship,  
21 including stepparents, stepsiblings, and all relatives whose status  
22 is preceded by the words "great," ~~"great-great"~~ "great-great," or  
23 "grand" or the spouse of any of these persons even if the marriage  
24 was terminated by death or dissolution. However, only the  
25 following relatives shall be given preferential consideration for the  
26 placement of the child: an adult who is a grandparent, aunt, uncle,  
27 or sibling.

28 (d) Subsequent to the hearing conducted pursuant to Section  
29 358, whenever a new placement of the child must be made,  
30 consideration for placement shall again be given as described in  
31 this section to relatives who have not been found to be unsuitable  
32 and who will fulfill the child's reunification or permanent plan  
33 requirements. In addition to the factors described in subdivision  
34 (a), the county social worker shall consider whether the relative  
35 has established and maintained a relationship with the child.

36 (e) If the court does not place the child with a relative who has  
37 been considered for placement pursuant to this section, the court  
38 shall state for the record the reasons placement with that relative  
39 was denied.

1 SEC. 9. Section 16001.9 of the Welfare and Institutions Code  
2 is amended to read:

3 16001.9. (a) It is the policy of the state that all children in  
4 foster care shall have the following rights:

5 (1) To live in a safe, healthy, and comfortable home where he  
6 or she is treated with respect.

7 (2) To be free *and protected* from physical, sexual, emotional,  
8 or other abuse, or corporal punishment.

9 (3) To receive adequate and healthy food, adequate clothing,  
10 and, for youth in group homes, an allowance.

11 (4) To receive medical, dental, vision, and mental health  
12 services.

13 (5) To be free of the administration of medication or chemical  
14 substances, unless authorized by a physician.

15 (6) To contact family members, unless prohibited by court  
16 order, and social workers, attorneys, foster youth advocates and  
17 supporters, Court Appointed Special Advocates (CASA), and  
18 probation officers.

19 (7) To visit and contact brothers and sisters, unless prohibited  
20 by court order.

21 (8) To contact the Community Care Licensing Division of the  
22 State Department of Social Services or the State Foster Care  
23 Ombudsperson regarding violations of rights, to speak to  
24 representatives of these offices confidentially, and to be free from  
25 threats or punishment for making complaints.

26 (9) To make and receive confidential telephone calls and send  
27 and receive unopened mail, unless prohibited by court order.

28 (10) To attend religious services and activities of his or her  
29 choice.

30 (11) To maintain an emancipation bank account and manage  
31 personal income, consistent with the child's age and  
32 developmental level, unless prohibited by the case plan.

33 (12) To not be locked in any room, building, or facility  
34 premises, unless placed in a community treatment facility.

35 (13) To attend school and participate in extracurricular,  
36 cultural, and personal enrichment activities, consistent with the  
37 child's age and developmental level.

38 (14) To work and develop job skills at an age-appropriate level  
39 that is consistent with state law.



1 (15) To have social contacts with people outside of the foster  
2 care system, such as teachers, church members, mentors, and  
3 friends.

4 (16) To attend Independent Living Program classes and  
5 activities if he or she meets age requirements.

6 (17) To attend court hearings and speak to the judge.

7 (18) To have storage space for private use.

8 (19) To review his or her own case plan if he or she is over 12  
9 years of age and to receive information about his or her  
10 out-of-home placement and case plan, including being told of  
11 changes to the plan.

12 (20) To be free from unreasonable searches of personal  
13 belongings.

14 (21) To confidentiality of all juvenile court records consistent  
15 with existing law.

16 (b) Nothing in this section shall be interpreted to require a  
17 foster care provider to take any action that would impair the health  
18 and safety of children in out-of-home placement.

19 (c) *The guardian ad litem or attorney for a child whose rights*  
20 *under subdivision (a) are violated shall have a right of action for*  
21 *equitable relief to enforce those rights before the juvenile court*  
22 *that has jurisdiction over the child. In addition to any equitable*  
23 *relief, the juvenile court may issue, on its own motion, an order of*  
24 *compliance upon any person abridging or threatening violation of*  
25 *those rights. Reasonable attorney's fees shall be awarded to*  
26 *counsel bringing an action under this subdivision where the action*  
27 *produces an order or other benefit for the child.*

28 SEC. 10. Section 16500 of the Welfare and Institutions Code  
29 is amended to read:

30 16500. (a) The state, through the department and county  
31 welfare departments, shall establish and support a public system  
32 of statewide child welfare services to be developed as rapidly as  
33 possible and to be available in each county of the state. All counties  
34 shall establish and maintain specialized organizational entities  
35 within the county welfare department which shall have sole  
36 responsibility for the operation of the child welfare services  
37 program.

38 ~~The~~

39 (b) *The* Legislature hereby declares its intent, in providing for  
40 this statewide system of child welfare services, that all children are

1 entitled to be safe and free from abuse and neglect *and that the*  
2 *state owes a mandatory duty of the highest order to protect and*  
3 *care for abused and neglected children over whom the state has*  
4 *taken jurisdiction through juvenile dependency court orders.*

5 SEC. 11. Section 16501.1 of the Welfare and Institutions  
6 Code is amended to read:

7 16501.1. (a) The Legislature finds and declares that the  
8 foundation and central unifying tool in child welfare services is the  
9 case plan.

10 (b) The Legislature further finds and declares that a case plan  
11 ensures that the child receives protection and safe and proper care  
12 and case management, and that services are provided to the child  
13 and parents or other caretakers as appropriate in order to improve  
14 conditions in the parent's home, to facilitate the safe return of the  
15 child to a safe home or the permanent placement of the child, and  
16 to address the needs *and ensure the protection* of the child while  
17 in foster care, *including out-of-home placement*. A case plan shall  
18 be based upon the principles of this section and shall document that  
19 a preplacement assessment of the service needs of the child and  
20 family, and preplacement preventive services, have been  
21 provided, and that reasonable efforts to prevent out-of-home  
22 placement have been made. In determining the reasonable services  
23 to be offered or provided, the child's health and safety shall be the  
24 paramount concerns. Reasonable services shall be offered or  
25 provided to make it possible for a child to return to a safe home  
26 environment, unless, pursuant to subdivisions (b) and (e) of  
27 Section 361.5, the court determines that reunification services  
28 shall not be provided. If reasonable services are not ordered, or are  
29 terminated, reasonable efforts shall be made to place the child in  
30 a timely manner in accordance with the permanent plan and to  
31 complete all steps necessary to finalize the permanent placement  
32 of the child.

33 (c) When out-of-home placement is used to attain case plan  
34 goals, the decision regarding choice of placement shall *first ensure*  
35 *the safety and protection of the child from abuse. The choice of*  
36 *placement shall thereafter* be based upon selection of a safe setting  
37 that is the least restrictive or most familylike and the most  
38 appropriate setting that is available and in close proximity to the  
39 parent's home, consistent with the selection of the environment  
40 best suited to meet the child's special needs and best interest, or

both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of *child* abuse or neglect, as defined in ~~Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4~~ *Section 11165.6 of the Penal Code*, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at

1 least every 12 months and submit a report to the court on each visit.  
2 For children in out-of-state group home facilities, visits shall be  
3 conducted at least monthly, pursuant to Section 16516.5. At least  
4 once every six months, at the time of a regularly scheduled social  
5 worker contact with the foster child, the child's social worker shall  
6 inform the child of his or her rights as a foster child, as specified  
7 in Section 16001.9. The social worker shall provide the  
8 information to the child in a manner appropriate to the age or  
9 developmental level of the child.

10 (5) When out-of-home services are used, the frequency of  
11 contact between the natural parents or legal guardians and the child  
12 shall be specified in the case plan. The frequency of those contacts  
13 shall reflect overall case goals, and consider other principles  
14 outlined in this section.

15 (6) When out-of-home placement is made, the case plan shall  
16 include provisions for the development and maintenance of sibling  
17 relationships as specified in subdivisions (b), (c), and (d) of  
18 Section 16002. If appropriate, when siblings who are dependents  
19 of the juvenile court are not placed together, the social worker for  
20 each child, if different, shall communicate with each of the other  
21 social workers and ensure that the child's siblings are informed of  
22 significant life events that occur within their extended family.  
23 Unless it has been determined that it is inappropriate in a particular  
24 case to keep siblings informed of significant life events that occur  
25 within the extended family, the social worker shall determine the  
26 appropriate means and setting for disclosure of this information to  
27 the child commensurate with the child's age and emotional  
28 well-being. These significant life events shall include, but shall not  
29 be limited to, the following:

30 (A) The death of an immediate relative.

31 (B) The birth of a sibling.

32 (C) Significant changes regarding a dependent child, unless the  
33 child objects to the sharing of the information with his or her  
34 siblings, including changes in placement, major medical or mental  
35 health diagnoses, treatments, or hospitalizations, arrests, and  
36 changes in the permanent plan.

37 (7) When out-of-home placement is made in a foster family  
38 home, group home, or other child care institution that is either a  
39 substantial distance from the home of the child's parent or out of  
40 state, the case plan shall specify the reasons why that placement is



1 in the best interest of the child. When an out-of-state group home  
2 placement is recommended or made, the case plan shall, in  
3 addition, specify compliance with Section 7911.1 of the Family  
4 Code.

5 (8) When out-of-home services are used, or when parental  
6 rights have been terminated and the case plan is placement for  
7 adoption, the case plan shall include a recommendation regarding  
8 the appropriateness of unsupervised visitation between the child  
9 and any of the child's siblings. This recommendation shall include  
10 a statement regarding the child's and the siblings' willingness to  
11 participate in unsupervised visitation. If the case plan includes a  
12 recommendation for unsupervised sibling visitation, the plan shall  
13 also note that information necessary to accomplish this visitation  
14 has been provided to the child or to the child's siblings.

15 (9) When out-of-home services are used and the goal is  
16 reunification, the case plan shall describe the services to be  
17 provided to assist in reunification and the services to be provided  
18 concurrently to achieve legal permanency if efforts to reunify fail.  
19 The plan shall also consider the importance of developing and  
20 maintaining sibling relationships pursuant to Section 16002.

21 (10) When out-of-home services are used, the child has been in  
22 care for at least 12 months, and the goal is not adoptive placement,  
23 the case plan shall include documentation of the compelling reason  
24 or reasons why termination of parental rights is not in the child's  
25 best interest. A determination completed or updated within the  
26 past 12 months by the department when it is acting as an adoption  
27 agency or by a licensed adoption agency that it is unlikely that the  
28 child will be adopted, or that one of the conditions described in  
29 paragraph (1) of subdivision (c) of Section 366.26 applies, shall be  
30 deemed a compelling reason.

31 (11) (A) Parents and legal guardians shall have an opportunity  
32 to review the case plan, sign it whenever possible, and then shall  
33 receive a copy of the plan. In any voluntary service or placement  
34 agreement, the parents or legal guardians shall be required to  
35 review and sign the case plan. Whenever possible, parents and  
36 legal guardians shall participate in the development of the case  
37 plan.

38 (B) Parents and legal guardians shall be advised that, pursuant  
39 to Section 1228.1 of the Evidence Code, neither their signature on  
40 the child welfare services case plan nor their acceptance of any

1 services prescribed in the child welfare services case plan shall  
2 constitute an admission of guilt or be used as evidence against the  
3 parent or legal guardian in a court of law. However, they shall also  
4 be advised that the parent's or guardian's failure to cooperate,  
5 except for good cause, in the provision of services specified in the  
6 child welfare services case plan may be used in any hearing held  
7 pursuant to Section 366.21 or 366.22 as evidence.

8 (12) The case plan shall be included in the court report and shall  
9 be considered by the court at the initial hearing and each review  
10 hearing. Modifications to the case plan made during the period  
11 between review hearings need not be approved by the court if the  
12 casework supervisor for that case determines that the  
13 modifications further the goals of the plan. When out-of-home  
14 services are used with the goal of family reunification, the case  
15 plan shall consider and describe the application of subdivision (b)  
16 of Section 11203.

17 (13) When the case plan has as its goal for the child a permanent  
18 plan of adoption or placement in another permanent home, it shall  
19 include documentation of the steps the agency is taking to find an  
20 adoptive family or other permanent living arrangements for the  
21 child; to place the child with an adoptive family, an appropriate  
22 and willing relative, a legal guardian, or in another planned  
23 permanent living arrangement; and to finalize the adoption or legal  
24 guardianship. At a minimum, the documentation shall include  
25 child specific recruitment efforts, such as the use of state, regional,  
26 and national adoption exchanges, including electronic exchange  
27 systems, when the child has been freed for adoption.

28 (g) If the court finds, after considering the case plan, that  
29 unsupervised sibling visitation is appropriate and has been  
30 consented to, the court shall order that the child or the child's  
31 siblings, and the child's prospective adoptive parents, if  
32 applicable, be provided with information necessary to accomplish  
33 this visitation. Nothing in this section shall be construed to require  
34 or prohibit the social worker's facilitation, transportation, or  
35 supervision of visits between the child and his or her siblings.

36 (h) The case plan documentation on sibling placements  
37 required under this section shall not require modification of  
38 existing case plan forms until the Child Welfare Services Case  
39 Management System is implemented on a statewide basis.



(i) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. ~~These model standards and guidelines shall be developed by March 1, 1999.~~

SEC. 12. Section 16507.5 of the Welfare and Institutions Code is amended to read:

16507.5. (a) When a minor is separated or is in the process of being separated from the minor's family under the provisions of a voluntary placement agreement, the county welfare department or a licensed private or public adoption agency social worker shall make any ~~and all~~ reasonable and necessary provisions for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, *and shall ensure as a foremost mandatory duty that the minor is protected from further abuse and neglect while under the jurisdiction of the court and the regulatory jurisdiction of the foster care system.*

**Responsibility**

(b) *The responsibility for the placement and care of the a minor described in subdivision (a) shall be with the social worker who may place the minor in any of the following:*

(1) The approved home of a relative or the approved home of a nonrelative extended family member as described in Section 362.7.

(2) A suitable licensed community care facility.

(3) With a foster family agency to be placed in a suitable licensed home or other family home which has been certified by the agency as meeting licensing standards.

(4) A home or facility in accordance with the federal Indian Child Welfare Act.

~~(b)~~

(c) The granting of a community care license or approval status does not entitle the caregiver to the placement of a specific child ~~or children~~. Placement is based on the child's needs and best interests.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

1 agencies and school districts for those costs shall be made pursuant  
2 to Part 7 (commencing with Section 17500) of Division 4 of Title  
3 2 of the Government Code. If the statewide cost of the claim for  
4 reimbursement does not exceed one million dollars (\$1,000,000),  
5 reimbursement shall be made from the State Mandates Claims  
6 Fund.

